

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 40

BY BUSINESS COMMITTEE

AN ACT

RELATING TO THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; AMENDING SECTION 41-4303, IDAHO CODE, TO PROVIDE THAT THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT APPLIES TO STRUCTURED SETTLEMENT ANNUITIES, TO PROVIDE THAT THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT DOES NOT APPLY TO CERTAIN POLICIES OR CONTRACTS AND SHALL NOT PROVIDE COVERAGE TO CERTAIN PERSONS WHO RECEIVE COVERAGE BY AN ASSOCIATION OF ANOTHER STATE; AMENDING SECTION 41-4305, IDAHO CODE, TO REVISE A DEFINITION, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-4308, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE DUTIES AND LIABILITY OF THE ASSOCIATION AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 41-4319, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PROHIBITED ADVERTISEMENT IN THE SALE OF INSURANCE AND TO SPECIFY THAT CERTAIN WRITTEN MATERIAL IS NOT PROHIBITED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-4303, Idaho Code, be, and the same is hereby amended to read as follows:

41-4303. APPLICATION OF CHAPTER. (1) This chapter shall apply to direct life insurance policies, contractual obligations of managed care plans to members of such plans only, disability insurance policies, annuity contracts, and contracts supplemental to life and disability insurance policies, annuity contracts, and contracts supplemental to life and disability insurance policies and annuity contracts issued by persons licensed to transact insurance in this state at any time. Covered policies shall include annuities owned by a trust for a money purchase pension plan, profit sharing plan, 401(k) thrift plan or any other defined contribution plan, ~~and~~ annuities owned by a custodian of an individual retirement account and structured settlement annuities.

(2) This chapter shall not apply to:

(a) That portion or part of a variable life insurance or variable annuity contract not guaranteed by an insurer;

(b) That portion or part of any policy or contract under which the risk is borne by the policyholder;

(c) Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(d) Any such policy or contract issued by a reciprocal insurer, mutual benefit association, fraternal benefit society, hospital and medical service corporation, limited managed care plan, or self-funded health care plan;

(e) Any unallocated annuity contract, including an annuity owned by a defined benefit pension plan or trust;

(f) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or exchanges in value:

(i) Averaged over the period of four (4) years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for that same four (4) year period or for such lesser period if the policy or contract was issued less than four (4) years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; ~~and~~

(ii) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available; and

(iii) For purposes of this section, "Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto; ~~or~~

(g) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policyowner, including without limitation:

(i) Claims based on marketing materials;

(ii) Claims based on side letters, riders or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(iii) Misrepresentations of or regarding policy benefits;

(iv) Extra-contractual claims; or

(v) A claim for penalties or consequential or incidental damages; or

(h) A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to 42 U.S.C. chapter 7, subchapter XVIII, parts C and D, commonly known as medicare part C and D, or any regulations issued pursuant thereto.

(3) This chapter shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state if the payee or beneficiary receives any coverage by the association of another state.

(4) In order to avoid duplicate coverage, a person who is eligible for coverage under the provisions of this chapter and is currently provided coverage under the laws of any other state shall not be provided coverage under this chapter. This chapter shall be construed in conjunction with other states' laws in order to ensure coverage by only one (1) association.

SECTION 2. That Section 41-4305, Idaho Code, be, and the same is hereby amended to read as follows:

41-4305. DEFINITIONS. As used in this ~~act~~ chapter:

(1) "Account" means either of the three (3) accounts created under section 41-4306, Idaho Code.

(2) "Association" means the Idaho life and health insurance guaranty association created under section 41-4306, Idaho Code.

~~(3) "Director" means director of the department of insurance of this state.~~

~~(4) "Contractual obligation" means any obligation under covered policies.~~

~~(5) "Covered policy" means any policy or contract within the scope of this ~~act~~ chapter~~ under section 41-4303, Idaho Code.

(5) "Director" means director of the department of insurance of this state.

(6) "Impaired insurer" means a member insurer deemed by the director after the effective date of this ~~act~~ chapter to be potentially unable to fulfill its contractual obligations and not an insolvent insurer.

(7) "Insolvent insurer" means a member insurer which after the effective date of this ~~act~~ chapter, becomes insolvent and is placed under a final order of liquidation, rehabilitation or conservation by a court of competent jurisdiction.

(8) "Member insurer" means any person licensed to transact in this state any kind of insurance to which this ~~act~~ chapter applies under section 41-4303, Idaho Code.

~~(9) "Premiums" means direct gross insurance premiums and annuity considerations received on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers.~~

~~(10) "Person" means any individual, corporation, partnership, association or voluntary organization.~~

(10) "Premiums" means direct gross insurance premiums and annuity considerations received on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers.

(11) "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed.

(12) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments to a plaintiff or other claimant for or with respect to personal injury suffered by the plaintiff or other claimant.

(13) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

SECTION 3. That Section 41-4308, Idaho Code, be, and the same is hereby amended to read as follows:

41-4308. POWERS AND DUTIES OF THE ASSOCIATION. In addition to the powers and duties enumerated in other sections of this ~~act~~ chapter:

(1) If a domestic insurer is an impaired insurer, the association may, subject to any conditions imposed by the association, other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the director:

(a) Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of residents of the impaired insurers;

(b) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate and assure payment of the contractual obligations to residents of the impaired insurer pending action under paragraph (a) of this subsection;

(c) Loan money to the impaired insurer.

(d) This chapter shall provide coverage for the policies and contracts specified in subsection (1) of this section, for persons who are not residents, but only under the following conditions:

(i) The insurers which issued such policies or contracts are domiciled in this state;

(ii) The director has determined that by statute, similar protection is not available for such nonresidents as that provided in this chapter for residents of this state; and

(iii) The policy or contract establishing or creating the obligation is not a managed care plan.

(2) If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the director:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of residents of the insolvent insurer;

(b) Assume payment of the contractual obligations to residents of the insolvent insurer; and

(c) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(d) This chapter shall provide coverage for the policies and contracts specified in subsection (2) of this section, for persons who are not residents, but only under the following conditions:

(i) The insurers which issued such policies or contracts are domiciled in this state;

(ii) The director has determined that by statute, similar protection is not available for such nonresidents as that provided by this chapter for residents of this state; and

(iii) The policy or contract establishing or creating the obligation is not a managed care plan.

(3) If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the director:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(b) Assure payment of the contractual obligations of the insolvent insurer to residents; and

(c) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

Provided, however, that this subsection shall not apply where the director has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this ~~act~~ chapter for residents of this state.

(4) (a) In carrying out its duties under subsections (2) and (3) of this section, permanent policy liens, or contract liens may be imposed in connection with any guarantee, assumption or reinsurance agreement, if the court:

(i) Finds that the amounts which can be assessed under this ~~act~~ chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens; to be in the public interest; and

(ii) Approves the specific policy liens or contract liens to be used.

(b) Before being obligated under subsections (2) and (3) of this section, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans in addition to any contractual provisions for deferral of cash or policy loan values and such temporary moratoriums and liens may be imposed if they are approved by the court.

(5) If the association fails to act within a reasonable period of time as provided in subsections (2) and (3) of this section, the director shall have the powers and duties of the association under this ~~act~~ chapter with respect to insolvent insurers.

(6) The association may render assistance and advice to the director upon his request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(7) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this ~~act~~ chapter. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

(8) (a) Any person receiving benefits under this ~~act~~ chapter shall be deemed to have assigned the rights under the covered policy to the association to the extent of the benefits received because of this ~~act~~ chapter whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this ~~act~~ chapter upon such person. The association shall be subrogated to these rights against the assets of any insolvent insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this ~~act~~ chapter.

(9) The contractual obligations of the insolvent insurer for which the association becomes or may become liable shall be the lesser of:

(a) The contractual obligations for which the insolvent insurer would have been liable in the absence of an insolvency; or

(b) Unless such obligations are reduced as permitted by subsection (4) of this section, the aggregate liability of the association shall not exceed the following per policy:

(i) One hundred thousand dollars (\$100,000) in net cash surrender in net cash withdrawal values for life insurance, or three hundred thousand dollars (\$300,000) in life insurance death benefits;

(ii) Three hundred thousand dollars (\$300,000) in disability insurance claims or benefit payments, or one hundred thousand dollars (\$100,000) in net cash surrender and net cash withdrawal values for disability benefits;

(iii) ~~Three hundred thousand dollars (\$300,000) of annuity benefit payments for annuities for which periodic annuity benefits, for a period of not less than the annuitant's lifetime or for a period certain of not less than ten (10) years, have begun to be paid on or before the date of the impairment or insolvency, or one~~ Two hundred fifty thousand dollars (\$250,000) in the present value of annuity benefits, including net cash surrender or net cash withdrawal values; or

(iv) Where no coverage limit has been specified for a covered policy or benefit, the coverage limit shall be three hundred thousand dollars (\$300,000).

(c) In no event shall the association be liable to expend more than three hundred thousand dollars (\$300,000) in the aggregate for all benefits, including cash values, with respect to any one (1) life.

(10) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this ~~act~~ chapter;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 41-4309, Idaho Code;

(c) Borrow money to effect the purposes of this ~~act~~ chapter. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this ~~act~~ chapter;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) Take such legal action as may be necessary to avoid payment of improper claims;

(g) Exercise, for the purposes of this ~~act~~ chapter and to the extent approved by the director, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

SECTION 4. That Section 41-4319, Idaho Code, be, and the same is hereby amended to read as follows:

41-4319. PROHIBITED ADVERTISEMENT OF INSURANCE GUARANTY ASSOCIATION ACT IN SALE OF INSURANCE. No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Idaho life and health insurance guaranty association act. Provided, however, that this section shall not apply to the Idaho life and health insurance guaranty association or any other entity which does not sell or solicit insurance. This section shall also not prohibit the furnishing of written information that is in a form prepared by the association and approved by the director upon request of the policyowner.